Opportunity (EO), Softwood Timber (ST), Recreation (RL), and Rural Housing loans for farm service buildings (RHF). Nonprogram (NP) farm type loans may be serviced under this subpart for borrowers who also have FLP loans.

[60 FR 46756, Sept. 8, 1995, as amended at 64 FR 393, Jan. 5, 1999; 65 FR 31249, 31250, May 17, 2000]

§ 1951.952 General.

DSA is a program whereby borrowers who are current or not more than one installment behind on any and all FLP loans may be permitted to move the scheduled annual installment for each eligible FLP loan to the end of the loan term. The intent of this program is to relieve some of the borrower's immediate financial stress caused by a disaster or low commodity prices and avoid foreclosure by the Government. DSA is not intended to circumvent the servicing available under subpart S of this part.

[60 FR 46756, Sept. 8, 1995, as amended at 64 FR 394, Jan. 5, 1999; 65 FR 31249, May 17, 2000]

§ 1951.953 Notification and request for DSA.

(a) [Reserved]

(b) *Deadline to apply*. All FLP borrowers liable for the debt must request DSA within 8 months from the date the disaster was designated, in accordance with 7 CFR part 1945, subpart A. Applications due to low commodity prices in 1999 must be received on or before August 31, 2000.

(c) *Information needed to apply*. (1) A written request for DSA signed by all parties liable for the debt; and

(2) Actual production, income, and expense records for the production and marketing period in which the disaster occurred. Other information may be requested by the servicing official when needed to make an eligibility determination.

[60 FR 46756, Sept. 8, 1995, as amended at 62 FR 41252, Aug. 1, 1997; 64 FR 394, Jan. 5, 1999; 65 FR 31249, May 17, 2000]

§ 1951.954 Eligibility and loan limitation requirements.

(a) *Eligibility requirements*. The following requirements must be met to be eligible for DSA:

(1)(i) The borrower must have operated a farm or ranch in a county designated a disaster area as contained in 7 CFR part 1945, subpart A, or a county contiguous to such an area, and must have been a borrower and operated the farm or ranch at the time of the low commodity prices or disaster period.

(ii) If the borrower is applying for a second installment to be set aside based on a declared disaster, the borrower must have operated in a county declared a major disaster by the President or the Secretary, or in a county contiguous to such a county, and the Agency must have determined that second set-asides can be processed and approved for declared disasters in the specified year. The first set aside must have been provided for a previous crop year.

(iii) All FLP borrowers may apply for an installment to be set aside based on low commodity prices during 1999. If the borrower is applying for a second installment to be set aside based on low commodity prices, the first set-aside must have been provided for a previous crop year. County location, or proximity to a disaster declared county is not a consideration when the DSA is justified by low commodity prices.

(iv) A borrower cannot have more than two installments set aside on any loan.

(2) The borrower must have acted in good faith as defined in § 1951.906 of subpart S of this part.

(3) All nonmonetary defaults must have been resolved. This means that even though the borrower has acted in good faith, the borrower may still be in default for reasons, such as, but not limited to: no longer farming, prior lienholder foreclosure, bankruptcy or under court jurisdiction, not properly maintaining chattel and real estate security, not properly accounting for the sale of security, or not carrying out any other agreement made with the Agency.

(4) The borrower must be current or not more than one installment behind on any and all FLP loans at the time the scheduled installment will be set–aside. Borrowers paying under a debt settlement adjustment agreement in accordance with subpart B of part 1956 are not eligible.

(5) As a direct result of the declared disaster or the 1999 low commodity prices, both pursuant to paragraph (a)(1) of this section, the borrower does not have sufficient income available to pay all family living and operating expenses, other creditors, and FSA. This determination will be based on the borrower's actual production, income and expense records for the disaster or affected year and any other records required by the servicing official. Compensation received for losses shall be considered as well as increased expenses incurred because of a disaster. Consideration will also be given to insufficient income for the next production and marketing period following the affected year if the borrower establishes that production will be reduced or expenses increased as a result of the disaster or the 1999 low commodity prices.

(6) For the next business accounting year, the borrower must develop a positive cash flow projection showing that the borrower will at least be able to pay all operating expenses and taxes due during the year, essential family living expenses and meet scheduled payments on all debts. The cash flow projection must be prepared in accordance with 7 CFR 1924.56. The borrower will provide any documentation required to support the cash flow projection.

(7) After the scheduled installments are set-aside, all FLP and NP farm type loans must be current.

(8) The borrower's FLP loan has not been accelerated nor has the borrower's debt been restructured under subpart S of this part since the disaster or the low commodity prices occurred.

(b) *Loan limitation requirements.* (1) The loan must have been outstanding at the time of the disaster.

(2)(i) Except as provided in paragraph (a) of this section, only one unpaid installment for each FLP loan may be set-aside.

(ii) For disaster declarations during 1998, or low commodity prices in 1998, borrowers who already have one installment set aside from a previous disaster may set aside a second installment.

(iii) If all set-asides are paid in full, or cancelled through restructuring under subpart S of this part, the set-aside will no longer exist and the loan may be considered for DSA.

(3) The term remaining on the loan receiving DSA equals or exceeds 2 years from the due date of the installment being set-aside.

(4) The amount of set-aside shall be limited to the amount the borrower was unable to pay FSA from the production and marketing period in which the disaster or low commodity prices occurred. However, if the installment due immediately after the disaster was paid, but other creditors and expenses were not, the amount set-aside will be the lessor of the amount the borrower is unable to pay other creditors and expenses, rounded up to the nearest whole installment, or the next FLP installment due.

(5) The installment that may be set-aside is limited to the first scheduled annual installment due immediately after the disaster or low commodity prices occurred, unless that installment is paid, then the next scheduled annual installment may be set-aside.

(6) The amount set-aside will be the unpaid balance remaining on the installment at the time the borrower signs exhibit A of FmHA Instruction 1951–T (available in any FSA office.) This amount will include the unpaid interest and any principal that would be credited to the account as if the installment were paid on the due date taking into consideration any payments applied to principal and interest since the due date. Recoverable cost items charged to FO, SW, and RHF loans may be set-aside with the annual installment. Cost items identified with a loan number different from the parent loan cannot be set-aside.

[60 FR 46756, Sept. 8, 1995, as amended at 62 FR 41252, Aug. 1, 1997; 64 FR 394, Jan. 5, 1999; 65 FR 31249, 31250, May 17, 2000]